

Message Text

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ACTION COME-00

INFO OCT-01 EUR-12 ISO-00 EB-08 L-03 TRSE-00 OPIC-06

FTC-01 CIAE-00 INR-07 NSAE-00 /038 W

-----012325Z 018670 /73

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FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 3021

UNCLAS SECTION 01 OF 02 OTTAWA 02291

E.O.11652:N/A

TAGS: EIND, EINV, CA

SUBJECT: WESTINGHOUSE TRADEMARK

REF: (A) STATE 65455; (B) OTTAWA 230

1. SUMMARY. REGISTERED USER FILE IN OFFICE OF TRADEMARK REGISTRAR INDICATES WCI CANADA AND CAMCO REPRESENTATIVES PLAN MEETING IN APRIL BUT WCI DOES NOT INTEND AT THIS MEETING TO NEGOTIATE ITS PENDING REGISTERED USER APPLICATION. IN MEANTIME, CAMCO HAS ASKED FOR NEW HEARING WHICH REGISTRAR OF TRADEMARKS NOW CONSIDERING. END SUMMARY.

2. REGISTERED USER FILE IN OFFICE OF TRADEMARK REGISTRAR INDICATES THAT CAMCO WAS INSTRUCTED ON MARCH 18, 1977 BY REGISTRAR OF TRADEMARKS TO SUBMIT ANY MATERIAL PERTINENT TO WCI CANADA APPLICATION FOR WESTINGHOUSE TRADEMARK BY MARCH 25, 1977.

3. ON MARCH 24, 1977 WCI CANADA'S LAW FIRM, SMART AND BIGGAR, WROTE TO REGISTRAR OF TRADEMARKS: QUOTE. WE ARE ADVISED THAT REPRESENTATIVES OF CAMCO AND WCI HAVE ARRANGED TO MEET IN APRIL TO DISCUSS VARIOUS ASPECTS OF THE MATTER IN DISPUTE BETWEEN THEM. HOWEVER, WCI DOES NOT INTEND TO NEGOTIATE ITS PENDING REGISTERED USER

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APPLICATION, AND WISHES TO PURSUE THAT APPLICATION IRRESPECTIVE OF ANY SUCH MEETING WITH CAMCO. ACCORDINGLY, WCI WOULD BE OPPOSED TO ANY REQUEST THAT MIGHT BE MADE ON BEHALF OF CAMCO TO EXTEND THE DUE DATE FOR FILING OF CAMCO'S SUBMISSION UNDER SUBSECTION 49(12) OF THE ACT, PRESENTLY DUE ON MARCH 25, 1977. END QUOTE.

4. CAMCO, ACTING BEFORE DEADLINE OF MARCH 25, SUBMITTED REQUEST FOR HEARING BASED ON FOLLOWING "FACTS":

A. PURSUANT TO AN AGREEMENT DATED DECEMBER 31, 1976, CAMCO IS PURCHASING WESTINGHOUSE CANADA LTD. AS A GOING CONCERN, INCLUDING WESTINGHOUSE CANADA'S ENTIRE HOUSEHOLD APPLIANCE BUSINESS. THIS TRANSACTION IS TO BE COMPLETED ON JUNE 30, 1977.

B. CAMCO WILL BE ACQUIRING ALL PHYSICAL PLANT AND EQUIPMENT OF WESTINGHOUSE CANADA'S APPLIANCE BUSINESS, ITS EMPLOYEES AND SERVICE ORGANIZATION, TOGETHER WITH WESTINGHOUSE CANADA'S OBLIGATIONS FOR PENSIONS FOR THESE AND FORMER EMPLOYEES.

C. CAMCO WILL BE ACQUIRING ENTIRE INVENTORY OF APPLIANCES BEARING TRADE MARK/TRADE NAME "WESTINGHOUSE" AS WELL AS ITS ENTIRE INVENTORY OF REPLACEMENTS AND SPARE PARTS.

D. CAMCO HAS PUBLICLY EXPRESSED TO FEDERAL GOVERNMENT ITS INTENTIONS TO CONTINUE NORMAL OPERATIONS OF WESTINGHOUSE PLANTS AND MAINTAIN BALANCED EMPLOYMENT.

E. UNTIL CLOSING, WESTINGHOUSE CANADA WILL CONTINUE TO MANUFACTURE ITS APPLIANCES IN USUAL COURSE AND WILL CONTINUE TO BE ENTITLED TO APPLY TRADE MARK "WESTINGHOUSE".

F. BY VIRTUE OF PURCHASER'S AGREEMENT, CAMCO WILL,
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FOLLOWING CLOSING, HAVE UNQUALIFIED RIGHTS AS WARRANTED BY PURCHASER'S AGREEMENT TO SELL THROUGHOUT CANADA WESTINGHOUSE CANADA'S ENTIRE INVENTORY OF FINISHED HOUSEHOLD APPLIANCES.

G. FOLLOWING CLOSING, CAMCO WILL BE SUCCESSOR TO WESTINGHOUSE CANADA'S APPLIANCE BUSINESS AND PURCHASER'S AGREEMENT ACKNOWLEDGES CAMCO'S RIGHT TO SO HOLD ITSELF OUT TO PUBLIC.

H. UNDER PURCHASER'S AGREEMENT, WESTINGHOUSE CANADA HAS UNDERTAKEN TO USE ITS BEST EFFORTS TO PRESERVE FOR CAMCO ITS HOUSEHOLD APPLIANCE BUSINESS RELATIONSHIP WITH SUPPLIERS, CUSTOMERS AND OTHERS PERTAINING TO SUCH BUSINESS.

I. CAMCO WILL ACQUIRE WESTINGHOUSE CANADA'S EXISTING APPLIANCE SERVICE ORGANIZATION AND ASSUME WESTINGHOUSE CANADA'S WARRANTY OBLIGATION ON PREVIOUSLY MANUFACTURED

WESTINGHOUSE CANADA APPLIANCES.

J. WHILE CAMCO HAS AGREED TO PROVIDE SERVICING OF WESTINGHOUSE CANADA'S MANUFACTURED APPLIANCES "ONLY TO EXTENT IT CONTINUES TO HAVE AVAILABLE NECESSARY SPARE AND REPLACEMENT PARTS", CAMCO INTENDS SERVICING ALL WESTINGHOUSE APPLIANCES INDEFINITELY.

K. CAMCO'S OWNERSHIP AND RIGHT TO MARKET ENTIRE INVENTORY

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ACTION COME-00

INFO OCT-01 EUR-12 ISO-00 EB-08 L-03 TRSE-00 OPIC-06

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OF WESTINGHOUSE MAJOR APPLIANCES WHICH WILL BE ACQUIRED BY IT JUNE 30, 1977 WILL PLACE IT IN POSITION OF MARKETING WESTINGHOUSE-BRANDED APPLIANCES OVER A PERIOD OF TIME WHICH MAY RUN BEYOND MARCH 1, 1978, DATE UP TO WHICH WCI HAS APPLIED FOR REGISTERED USER STATUS. (IF WCI HAS SOLE USE OF TRADEMARK UP TO THAT TIME, IT APPARENTLY FEELS ITS CLAIM FOR CONTINUED USE IS SECURE. ALSO, WE UNDERSTAND WCI PLANS TO USE "WHITE-WESTINGHOUSE" TRADEMARK AFTER THAT DATE, APPLYING FOR IT AFTER OBTAINING "WESTINGHOUSE" TRADEMARK.)

L. CAMCO WILL PROVIDE WARRANTY SERVICING FOR MUCH LONGER PERIOD OF TIME, EVEN BEYOND MARCH 1, 1978, ON "WESTINGHOUSE" APPLIANCES, IN FACT UNTIL AT LEAST 1983.

M. COST TO CONSUMER WILL BE LESS BECAUSE OF CAMCO UNDERTAKING WARRANTY.

N. DURING RELEVANT PERIOD FOR WHICH REGISTERED USER APPLICATION IS SOUGHT, CAMCO WILL BE SELLING, AND WILL BE ONLY SOURCE OF, "WESTINGHOUSE" APPLIANCES MANUFACTURED BY FIRM (WESTINGHOUSE CANADA) WHOSE

REPUTATION HAS BEEN ESTABLISHED IN MARKETPLACE WITH
CANADIAN CONSUMER PUBLIC.

O. WCI IS IN NO WAY AFFILIATED WITH OR RELATED TO
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WESTINGHOUSE CANADA AND HAS NO RIGHTS TO WESTINGHOUSE
CANADA'S APPLIANCE BUSINESS.

P. WCI HAS MADE IT CLEAR IT DOES NOT INTEND TO USE
"WESTINGHOUSE" ITSELF BUT RATHER "WHITE-WESTINGHOUSE"
BOTH AS TRADE NAME AND TRADEMARK.

Q. CONFUSION AFFECTING CAMCO'S ABILITY TO MARKET ANY
OF ITS APPLIANCES MUST NECESSARILY INHIBIT CAMCO'S
PRODUCTION SCHEDULING AND CONSEQUENTLY ADVERSELY
AFFECT EMPLOYMENT AND EMPLOYEES.

5. ONE OFFICIAL IN CONSUMER AND CORPORATE AFFAIRS
INDICATED INFORMALLY TO EMBOFF THAT REGARDLESS OF HOW
REGISTRAR OF TRADEMARKS DECIDES, LOSING SIDE PROBABLY
WILL APPEAL, AND LITIGATION IS VERY POSSIBLE UNLESS
SOME AGREEMENT WORKED OUT BETWEEN CONFLICTING PARTIES.
ANOTHER OFFICIAL INDICATED HE WOULD NOT BE SURPRISED IF
CAMCO, BY VARIOUS APPEALS AND DELAYING TACTICS,
CONTINUED TO TRY TO KEEP FINAL DECISION FROM BEING MADE
UNTIL MARCH 1, 1978, DATE TO WHICH WCI HAS APPLIED FOR
REGISTERED USER STATUS. ACCORDING TO BOTH THESE OFFICIALS
THERE IS NO SET TIME WITHIN WHICH REGISTRAR OF TRADEMARKS
MUST ACT. INDUSTRY, TRADE AND COMMERCE OFFICIAL ALSO
TOLD EMBOFF HE WOULD "BET MY MONEY THAT IN ALL LIKELIHOOD
THE CASE WILL END UP IN COURT AS THE REGISTRAR'S
DECISION IS APPEALABLE."

6. COMMENT: EMBASSY HAS EXPRESSED INTEREST IN
RESOLUTION THIS CASE TO OFFICIALS DEPARTMENT OF CONSUMER
AND CORPORATE AFFAIRS SEVERAL TIMES RECENTLY, BUT SINCE
U.S. SUBSIDIARIES INVOLVED ON BOTH SIDES, HAS BEEN
CAREFUL NOT TO TAKE POSITION ON MERITS OF CASE.
EMBASSY UNDERSTANDS WCI HAS TAKEN MINISTER CHRETIEN
UP ON HIS OFFER TO MEET WITH WCI AND MINISTER WAS
SYMPATHETIC WITH WCI'S VIEWS. SUGGEST WCI ESPECIALLY
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STRESS TO CHRETIEN THAT WESTINGHOUSE CANADA AGREED TO
RELINQUISH ALL CLAIM TO TRADEMARK AND THEN RENEGED ON

AGREEMENT, IF THAT IN FACT IS TRUE (PARA. 2, REF A).

ENDERS

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Message Attributes

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